IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9272 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VELJIBHAI HAJAJIBHAI KOCHRA

Versus

CHAIRMAN, LIFE INSURANCE CORP. OF INDIA

Appearance:

1. Special Civil Application No. 9272 of 2003

MR ANIL N MEHTA for Petitioner No. 1

MR AK CLERK for Respondent No. 1

RULE SERVED for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 23/09/2004

ORAL JUDGEMENT

In this petition the petitioner has challenged the legality and validity of the order dated 24th March,

2001 by which the disciplinary authority ordered removal of the petitioner from service.

2 Short facts leading to the present petition can be noted at the outset.

3 The petitioner who was working as higher grade assistant with respondent no.1 - Life Insurance Corporation of India (to be referred to as "the Corporation" for short) was issued a charge-sheet dated 19th August, 1999 in which it was alleged inter-alia that the petitioner had created a dummy file in respect of Policy Nos.19833725 and 19833726 in the maiden name of his wife, prepared maturity claim vouchers of an amount of Rs.83,680 each and passed the same for payment unauthorisedly. It is further alleged that he had managed to get the cheques dated 30th May, 1998 issued and taken possession thereof, opened a new bank account on 6th June, 1998 in Bank of Baroda, Bhuj Branch, in the maiden name of his wife and deposited these two cheques totalling to Rs.1,67,360. It is further alleged that it was found that all the papers relating to the said policy were missing and the concerned dockets were also missing. It is alleged that by letter dated 24th June, 1998 the petitioner had admitted and confirmed his actions. He had confessed that he had destroyed all the papers relating to the policies and the payments. On the above grounds the petitioner was alleged to have failed to maintain absolute integrity and devotion to duty. He was asked to give his written reply within 15 days from the date of the charge-sheet.

4 Pursuant to the said charge-sheet the departmental enquiry was conducted against the petitioner and upon conclusion of the oral enquiry, the enquiry officer submitted his report on 27th October, 2000 in which the enquiry officer concluded that the charges against the petitioner stand proved. It may be noted at this stage that, initially, the petitioner remained present during the conduct of the enquiry, however, later on, did not participate in the enquiry and the enquiry was concluded ex parte.

5 After giving an opportunity to the petitioner to make representation against the enquiry report the disciplinary authority passed the impugned order dated 24th March, 2001 by which a punishment of removal from service was imposed upon the petitioner. The petitioner's appeal having been rejected, he preferred a memorial as per the Staff Regulations, which also came to be rejected. The petitioner has, therefore, filed this

petition challenging therein the action of the employer to impose a penalty of removal from service.

6 The learned counsel for the petitioner though in his oral arguments had submitted that the petitioner approached this Court only for reduction of penalty, I have considered all the submissions made on behalf of the petitioner and also raised in the petition with respect to legality of the departmental enquiry as well as the final order passed thereon.

7 The learned counsel for the petitioner has strongly urged that there was no misappropriation of the amounts in question and admittedly the petitioner had persuaded his wife to refund the amount in question. He submitted that it was a genuine mistake on the part of the petitioner to have paid aforesaid amounts before maturity and there was no dishonest intention on the part of the petitioner to pay the amount unauthorisedly. He, therefore, contends that the authorities erred in holding that the charges against the petitioner as made in the charge-sheet are proved and the punishment of removal from service is, therefore, disproportionate and excessive. He has submitted that the service regulations provide for lesser penalties as well and the competent authority, therefore, ought not to have passed the extreme penalty of removal from service.

8 In support of his contention, the learned counsel has relied on the decision of this High Court in re JAGDISHCHANDRA MAGANLAL TRIVEDI V. STATE BANK OF INDIA reported in 2004(2) GLH 514 and contended that if the penalty imposed by the employer shocks the conscience of the Court, the Court, in an appropriate case, substitute the penalty by imposing a lesser punishment by that imposed by the employer. Basing the reliance on the decision of RAMJI VIJAI RAI V. CHAIRMAN, LIFE INSURANCE CORPORATION OF INDIA reported in LAB IC 2697 the learned counsel has submitted that the appellate authority was required to consider all submissions made by the petitioner.

9 The petitioner has also raised grievances regarding not being permitted the assistant of his choice, the assistance of an advocate as also the turning down of request of shifting of the venue of the enquiry. He submitted that the authorities below have acted arbitrarily and illegally and that the authorities had a prejudged mind and bias against the petitioner and the entire enquiry is therefore vitiated.

10 Appearing for the respondents, the learned counsel Mr A.K. Clerk has supported the action of the respondents. He has submitted that there was ample evidence on record to establish the guilt of the petitioner, that the departmental enquiry was conducted in consonance with the service regulations and the principles of natural justice. He has submitted that looking to the grave charge held to have been proved against the petitioner there is no question of penalty being excessive or disproportionate.

11 The learned counsel Mr Clerk has pointed from his affidavit-in-reply that the petitioner was permitted to engage any employee working at Bhuj centre as his defence assistant. The petitioner, however, refused to do so and in fact later on did not even present in the enquiry proceedings and the enquiry had to be conducted ex parte.

12 Having heard the learned counsel appearing for the parties and having examined the material on record it is clear that the departmental inquiry was conducted against the petitioner in consonance with the rules of natural justice. The counsel for the petitioner is not able to point out any mandatory legal requirement which was not followed by the respondent. The petitioner does not have an absolute right to be represented through a legal practitioner. In view of the fact that it is not even contended by the petitioner that the enquiry officer was a legally trained person, the petitioner could not have insisted on being represented through a lawyer. The petitioner was also permitted assistant of any person from Bhuj centre which he refused. The petitioner could not make out any valid reason for shifting the venue of the enquiry.

13 No other submissions are made in support of the contention that the respondents had breached the principles of natural justice or that the enquiry was not validly held.

14 In view of this discussion, since I find that the enquiry was conducted by giving reasonable opportunity to the petitioner to defend himself, the question required to be examined is as to whether there was any material before the enquiry officer permitting him to conclude that the charges are proved against the petitioner. In this regard, before examining the material on record, one may notice the legal position with respect to the power of the High Court to examine the findings arrived at by the disciplinary authority during a domestic enquiry. A Division Bench of this Court by its judgement dated 25th

August, 2004 while deciding Special Civil Application No.5759 of 1999, after examining number of decisions of the Honourable Supreme Court had made the following observations:-

"49. From the above decisions, following legal principles can be culled out:

(i) A disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt.

(ii) The High Court cannot sit in appeal over the decision of the domestic tribunal. Therefore, where there are some relevant materials, which the authority has accepted and which material may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 of the Constitution of India to review the materials and to arrive at an independent finding on the materials.

(iii) If the inquiry is properly held, the question of adequacy or reliability of evidence cannot be gone into by the High Court. High Court cannot interfere with the penalty if the conclusion of the competent authority is based on evidence, even if some of it is found to be irrelevant or extraneous to the matter.

(iv) In case of disciplinary inquiry, technical rules of evidence have no application.

(v) The only consideration that court has in its judicial review is to consider whether the conclusion is based on evidence and supports the findings or whether the conclusion is based on no evidence. To put it differently, the High Court can interfere if the findings are perverse and are not supported by evidence on record or the findings

> recorded at the domestic trial are such to which no reasonably prudent person would have ever reached."

15 Keeping above judicial principles in mind and applying the same to the facts of the present case, I find that there is ample material on record to conclude the charges against the petitioner are proved. The enquiry officer as well as the disciplinary authority had independently of the petitioner's own letter of confession of guilt had come to the conclusion that that the charges against the petitioner are proved. Therefore, even if we were to ignore the petitioner's own letter of confession as having been obtained through force and coercion, as suggested by the learned counsel for the petitioner, there is sufficient material on record to establish the charge. The petitioner has also not denied having paid the amount to his wife in her maiden name. The petitioner has also not denied the fact that subsequently the amount was refunded by his wife at his own persuation. His case, however, is that the amount was paid by mistake and not on account of any dishonest intention. The petitioner, however, has not substantiated this contention and the disciplinary authority has discarded this theory. I am also inclined to accept the version of the Corporation since the petitioner is unable to explain his own conduct of persuading his wife to refund the amount in question. There is also a factor of the entire file having gone missing. The petitioner is also not able to explain this important circumstance. If it was only a mistake of over-payment, as suggested by the petitioner, the petitioner had nothing to hide. His attempt to destroy the evidence further reinforces the theory of his dishonest intention. The petitioner not only tried to dishonestly claim a large amount of Rs.1,67,360 but also tried to cover his action by destroying the entire file and other evidence pertaining to payment of the said amounts. In my opinion, the petitioner has committed very serious misconduct and the charges are conclusively proved.

16 In these circumstances, it is impossible for this Court to come to the conclusion that the penalty imposed by the employer is disproportionate or excessive, leave alone one that would shock conscience of the court. If at all any lesser punishment would have shocked the conscience of the Court.

17 In the result, I find that the petitioner has not made out any case. The petition must fail. The same is

hereby rejected. Rule is discharged. No order as to costs.

(Akil Kureshi, J.)

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